

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,)
) Case No. 1:15-CR-00010
) (RJA) (HBS)
 Plaintiff,)
)
 vs.) February 7th, 2019
)
 CHARLES WEBER,)
)
 Defendant.)

**TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE RICHARD J. ARCARA
SENIOR UNITED STATES DISTRICT JUDGE**

APPEARANCES:

For the Plaintiff: JAMES P. KENNEDY, JR.
ACTING UNITED STATES ATTORNEY
BY: STEPHANIE LAMARQUE, ESQ.
ASSISTANT UNITED STATES ATTORNEY
138 Delaware Avenue
Buffalo, NY 14202

For the Defendant CHARLES WEBER
Pro Se: 282 Ridgewood Drive
Snyder, NY 14226

For the Defendant FEDERAL PUBLIC DEFENDER'S OFFICE
Standby Counsel: BY: BRIAN COMERFORD, ESQ.
300 Pearl Street, Suite 200
Buffalo, NY 14202

Court Reporter: MEGAN E. PELKA, RPR
Robert H. Jackson Courthouse
2 Niagara Square
Buffalo, NY 14202

12:32PM 1 THE CLERK: Criminal action 2015-10A. United States
12:41PM 2 v. Charles Weber. Sentencing. Counsel and parties, please
12:41PM 3 state your name for the record.

12:41PM 4 MS. LAMARQUE: Stephanie Lamarque for the government.

12:42PM 5 MR. WEBER: Charles Weber, attorney in fact for the
12:42PM 6 principal.

12:42PM 7 MR. COMERFORD: Brian Comerford, standby counsel.

12:42PM 8 THE COURT: We're ready to proceed. The defendant is
12:42PM 9 before the Court for sentencing on his conviction following a
12:42PM 10 jury trial of two counts of making and subscribing a false
12:42PM 11 return, in violation of Title 26, United States Code,
12:42PM 12 Section 7206(1).

12:42PM 13 I know that the report was available to Mr. Weber. I
12:42PM 14 assume he read it. Mr. -- I know you don't have to review the
12:42PM 15 report with him, Mr. Comerford, but are you aware whether he
12:42PM 16 reviewed it or not?

12:42PM 17 MR. COMERFORD: Yes.

12:42PM 18 THE COURT: I will place the report in the record
12:42PM 19 under seal. If an appeal is filed, counsel will be permitted
12:42PM 20 access to the sealed report, except that counsel on appeal
12:43PM 21 will not be permitted access to the recommendation section.
12:43PM 22 The parties have filed the statement of parties with respect
12:43PM 23 to sentencing factors.

12:43PM 24 The defendant has filed objections to the presentence
12:43PM 25 report. The Court has carefully reviewed the objections and

1 the United States' response and finds that none of the
2 objections have merit. The Court adopts the U.S. Probation
3 Office's February 5th, 2019 addendum to the presentence report
4 as its findings with respect to the defendant's objection.
5 The Court adopts the facts in the offense conduct section of
6 the presentence report as its findings of fact and hereby
7 incorporates them in the record.

8 Pursuant to Guideline Section 3D1.1(d), Counts 1
9 and Count 2 of the indictment have been grouped together for
10 sentencing purposes. Count Group 1, Counts 1 and 2, making
11 and subscribing a false return. The report recommends that
12 the defendant's base offense level, under Guideline
13 Section 2T1.1(a)(1) and 2T4.1(f) is 16, as the tax loss is
14 \$190,547.50, which is more than \$100,000, but less than
15 \$250,000.

16 The report also recommends a two-level upward
17 adjustment, pursuant to Section 3C1.1, as the defendant
18 willfully obstructed or attempted to obstruct the
19 administration of justice. The Court specifically finds the
20 defendant obstructed justice during this trial by falsely
21 testifying that he believed that he was a non-resident alien,
22 who had no income during the year 2006 and 2007 tax years,
23 when he filed those two tax returns.

24 The defendant has adopted an idiosyncratic view of
25 the consequences of his heritage to place him above the

obligations to pay income taxes, but the Court concludes the defendant knew that at the time of his 2006, 2007 tax returns were filed and that he knows now that these views are false.

The Court specifically finds the defendant intentionally testified falsely that he believed the statements in the 2006, 2007 tax returns were correct. He intended to convince the jury that he had a good faith belief that those returns were accurate as to his resident citizenship and lack of income when he filed the returns in order to avoid convictions of two criminal charges he faced and not because he actually had a good faith belief that the statements on the return were accurate.

I observed the evidence during the trial, including the defendant's testimony, and concluded the defendant knew full well that those statements were false when he made them and they lacked the good faith belief that they were true. These circumstances support a two-level upward adjustment, pursuant to Guideline Section 3C1.1, with the defendant having attempted to obstruct the administration of justice.

Accordingly, the offense level should be properly calculated at level 18. The criminal history category is properly calculated as category I. Under this calculation, the advisory range for imprisonment is 27 to 33 months. The statutory maximum term of imprisonment is three years. The advisory guideline range for supervised release is one year on

12:46PM 1 each count, to be served concurrently. Advisory range for a
12:46PM 2 fine is 6,000 to \$60,000, plus the cost of imprisonment and
12:46PM 3 supervised release. The Court may order restitution as a
12:47PM 4 special condition of supervised release in the amount of
12:47PM 5 \$190,547.50, payable to the Internal Revenue Service.

12:47PM 6 In accordance with the Supreme Court decision, *U.S.*
12:47PM 7 *v. Booker* and the Second Circuit decision, *U.S. v. Crosby*,
12:47PM 8 this Court must consider the guidelines, is not bound by them.
12:47PM 9 The Court must also consider the factors in 18 U.S.C. 3553(a).
12:47PM 10 I'm in receipt of the defendant's sentencing filing, which I
12:47PM 11 have reviewed and considered. I have also considered all the
12:47PM 12 filings made by the parties related to the sentencing.

12:47PM 13 Mr. Comerford, do you have any -- I know you're
12:47PM 14 standby counsel. I assume you've had some discussion with
12:47PM 15 Mr. Weber. Do you have any concerns about his mental health,
12:47PM 16 as far as deteriorating since the Court found him mentally
12:48PM 17 competent?

12:48PM 18 MR. COMERFORD: Judge, I have not observed any
12:48PM 19 changes since then.

12:48PM 20 THE COURT: All right. Mr. Weber, this is your
12:48PM 21 opportunity to say anything you'd like to say, sir.

12:48PM 22 MR. WEBER: First question is, did you receive the
12:48PM 23 motion for relief and inclusive of deputy jurisdiction
12:48PM 24 yesterday?

12:48PM 25 THE COURT: Yes, I did.

12:48PM 1 MR. WEBER: Did you read it?

12:48PM 2 THE COURT: I read it.

12:48PM 3 MR. WEBER: Did you have any questions?

12:48PM 4 THE COURT: No. I have no questions. I find it
12:48PM 5 without merit. Go ahead.

12:48PM 6 MR. WEBER: Well, did you receive the judicially-
12:48PM 7 noticed documents? Did you have any questions on those?

12:48PM 8 THE COURT: No, I have no questions.

12:48PM 9 MR. WEBER: All right. And did you have any
12:48PM 10 questions about the Fourth Amendment right to private
12:48PM 11 property?

12:48PM 12 THE COURT: Please, I'm about to sentence you, sir.
12:48PM 13 This is your opportunity to say anything you wish to say in
12:48PM 14 mitigation of the sentence.

12:48PM 15 MR. WEBER: Well, that's why I'm leading up to this.

12:48PM 16 THE COURT: I'm not going to sit here and answer
12:48PM 17 questions for you, okay? I looked at every paper you filed.

12:48PM 18 MR. WEBER: Well, my question -- my statements are
12:48PM 19 that when I went through this process, the term U.S. means, to
12:49PM 20 me, United States of America. When you sign those forms
12:49PM 21 stating you are a U.S. person, there is -- there's no full
12:49PM 22 disclosure on what that term means. And the Supreme Court had
12:49PM 23 even stated, in *Cunard v. Mellon*, that the term United States
12:49PM 24 is a metaphor. It can be different things in different
12:49PM 25 situations. And in *Allison v. Evatt*, the Supreme Court ruled

12:49PM 1 that one of the meanings of the term U.S. or United States
12:49PM 2 meant the United States of America. And that's the term that
12:49PM 3 I meant it to be.

12:49PM 4 In no way would I ever claim to be a 14th Amendment
12:50PM 5 citizen or operate under the federal government when I could
12:50PM 6 be free. That does not make any sense. That was never my
12:50PM 7 intent, ever. So, for the U.S. Attorney to come in and state
12:50PM 8 because I claimed I was a U.S. citizen, so I must be one, that
12:50PM 9 also flies in the face of the Supreme Court holdings. I would
12:50PM 10 have to go through a Court of Record and that is not here.

12:50PM 11 That's the case -- that's the holding in *John Elk v.*
12:50PM 12 *Wilkins*, where John Elk came from a sovereign nation and he
12:50PM 13 wanted to become a U.S. citizen, declared himself to be a U.S.
12:50PM 14 citizen, so he could vote under the 15th Amendment. And the
12:50PM 15 Supreme Court rejected his claim because he did not go from
12:50PM 16 one sovereign nation to another without applying to a Court of
12:50PM 17 Record. And that still holds today, other than the fact that
12:51PM 18 now the Indian nations have been included, I think since
12:51PM 19 1920s, as some kind of a partnership with the United States
12:51PM 20 government.

12:51PM 21 So, when I tried to correct the record, it seems to
12:51PM 22 be rebuffed by the U.S. Attorney. I have a right to correct
12:51PM 23 the record. And as I understand those -- the trade name,
12:51PM 24 which is the all-capitalized name, that is not the name I have
12:51PM 25 my rights under correctly. That name is associated with --

12:51PM 1 apparently associated with the federal government. So, what I
12:51PM 2 did was I transferred that sovereignty back to the states on
12:51PM 3 the land, so that I'm under common law.

12:51PM 4 Now, when I went into the Erie County Clerk's Office
12:51PM 5 to record this last week, they didn't let me record it right
12:51PM 6 off the bat. I had to go see the county attorney. And I
12:52PM 7 handed him the papers. Then he asked me a few questions, then
12:52PM 8 he went to his superior. And he came back after about
12:52PM 9 15 minutes and he said, okay. I get it. You want to get off
12:52PM 10 the grid. I said, yes. I want to return to where I'm
12:52PM 11 properly -- where I properly belong and that is under
12:52PM 12 Article 4, Section 2.

12:52PM 13 To be under the 14th Amendment, I don't have the
12:52PM 14 physical characteristics, number 1 and I have never gone
12:52PM 15 through a Court of Record and there has been no evidence in
12:52PM 16 that court case that I have done so. And that is my
12:52PM 17 understanding. There is no evidence that a law allows me to
12:52PM 18 just declare myself a U.S. person because everything points --
12:52PM 19 all the evidence points to the fact that I'm a state citizen
12:52PM 20 under Article 4. And to this day, I still don't know what
12:53PM 21 evidence they have presented in this court that proves I'm a
12:53PM 22 U.S. person.

12:53PM 23 Just because I said so doesn't -- there's no
12:53PM 24 authority behind it. No Supreme Court authority was quoted
12:53PM 25 and no statutory or Constitutional authority. The Supreme

12:53PM 1 Court is actually against that.

12:53PM 2 You know, I make -- I gave the example of Arnold
12:53PM 3 Schwarzenegger coming in from a foreign sovereignty. He had
12:53PM 4 to apply for -- to be a U.S. person. He can't be a president
12:53PM 5 because he's not natural born. I can be. Natural born, under
12:53PM 6 Article 2, Section 1, Clause 5 is today's qualification to be
12:53PM 7 president. You have to be a citizen of the several states.
12:53PM 8 That qualification has never changed. Article 4, Section 2,
12:54PM 9 Clause 1 has never changed. It's not been repealed by the
12:54PM 10 14th Amendment.

12:54PM 11 So, to this day, I still don't know how the U.S.
12:54PM 12 Attorney or how this Court views me as a 14th Amendment
12:54PM 13 citizen, when there's been no evidence placed in court. I'm
12:54PM 14 still waiting for that.

12:54PM 15 So, Is the U.S. Attorney or the Court stating that I
12:54PM 16 cannot correct a mistake? Is that what's being said here? I
12:54PM 17 don't understand the position of the Court and I don't
12:54PM 18 understand the position of the U.S. Attorney, because I claim
12:54PM 19 to be one, I mean, what they're trying to state is my state of
12:54PM 20 mind.

12:55PM 21 My intent was to be a citizen of one of the several
12:55PM 22 states of the United States of America. That is the original
12:55PM 23 jurisdiction of this country. I never intended, ever, to
12:55PM 24 diminish my rights to the 14th Amendment citizen. There is
12:55PM 25 numerous cases. The latest one being in the Fifth District,

12:55PM 1 *Temmer v. Jones*. A U.S. person -- a U.S. citizen does not
12:55PM 2 have full access to the Bill of Rights and only through 1
12:55PM 3 through 8, has no access to 9 and 10, whatsoever. That's the
12:55PM 4 latest one.

12:55PM 5 You had *Maxwell v. Dow*, *Tashiro v. Jordan*, *United*
12:55PM 6 *States v. Cruikshank*, *Walker v. Sauvinet*. They all state the
12:56PM 7 same thing. A citizen of the United States does not have the
12:56PM 8 same rights as a citizen of the several states. To this day,
12:56PM 9 I repeat -- it bears repeating -- I do not know how, with any
12:56PM 10 authoritative citation present, that I was determined by this
12:56PM 11 Court to be a U.S. person under my baptismal name.

12:56PM 12 And I don't know what else to ask of this Court,
12:56PM 13 other than leniency, because of the inability, number 1, of
12:56PM 14 the government to prove that I was one or because of the fact
12:56PM 15 that the forms that you filled out do not disclose what that
12:57PM 16 term United States means. How many people in this country
12:57PM 17 fall under the same category? I don't know the answer to
12:57PM 18 that.

12:57PM 19 Because of the lack of evidence, move the Court to
12:57PM 20 dismiss all charges. That's the end of my comments.

12:57PM 21 THE COURT: All right. Ms. Lamarque?

12:57PM 22 MR. WEBER: Brian wants to say something.

12:57PM 23 MR. COMERFORD: Judge, can I just comment very
12:57PM 24 briefly?

12:57PM 25 THE COURT: Yes.

1 MR. COMERFORD: And I can't and wouldn't comment on
2 any of Mr. Weber's legal positions. I just wanted to point
3 out a couple things that I thought might be relevant to the
4 Court at sentencing to consider.

5 While -- during the time period in the indictment, I
6 think that there was no evidence that Dr. Weber was living any
7 sort of lavish life. He lived in a pretty modest home, had a
8 successful dental practice at the time but wasn't living
9 outside his means, wasn't taking extravagant vacations,
10 driving fancy cars. I think that he drives -- the pictures of
11 his house shows a modest house, he's driving a used Toyota
12 Camry.

13 And I personally have talked to some people in the
14 dental community in New York who know Dr. Weber and told me
15 that he was known as a very good and respected dentist who
16 they would, at times, send people to who needed certain things
17 done. So, notwithstanding anything else, he was doing good
18 work. He was respected. He did a lot of work with U.B.
19 Dental School, teaching up there.

20 And as a result of everything that's gone on here,
21 Judge, he's lost his business. He's no longer married. He
22 lost his license to practice dentistry. I think it's kind of
23 a sad story. And now he's, I think, he's living with his mom.
24 I think she's 89 years old. He stays with her. Just a few
25 things I thought the Court should consider. Thank you, Judge.

12:59PM 1 THE COURT: Thank you, Mr. Comerford.

12:59PM 2 MS. LAMARQUE: Obviously, most people in this country
12:59PM 3 don't enjoy paying their income taxes, but the country just
12:59PM 4 wouldn't work if everyone decided they didn't need to pay
12:59PM 5 their fair share. As the agents testified at trial, the IRS
12:59PM 6 does rely on the honesty of the taxpayer. And unfortunately,
12:59PM 7 in this case, the defendant took advantage of that. He was
12:59PM 8 opting into the benefits of citizenship and he was opting out
12:59PM 9 of the things that he didn't like; paying money.

12:59PM 10 He told others not to pay taxes. And even worse,
01:00PM 11 when he was visited by a revenue officer, he deliberately did
01:00PM 12 not follow that officer's instructions. He asked for a
01:00PM 13 \$15,000 refund he was not entitled to. He claimed he didn't
01:00PM 14 make income anywhere in the world. And he did this all under
01:00PM 15 penalties of perjury.

01:00PM 16 He goes on to make these preposterous claims, which
01:00PM 17 are in bad faith. He's part of a select group of people who's
01:00PM 18 descended from the founding fathers, so he's exempt from the
01:00PM 19 responsibilities of citizenship. And even though he wouldn't
01:00PM 20 concede it on cross-examination, it's apparent, from all of
01:00PM 21 the filings in this case, that he believes that only
01:00PM 22 decendents of slaves, basically any African American or any
01:00PM 23 immigrant who isn't linked to the founding fathers, has to pay
01:00PM 24 taxes. Those are the only people.

01:00PM 25 He boasts his claims of birthright to support his

1 ridiculous argument that he and anyone who can trace their DNA
2 to a founding father doesn't have to pay taxes. And he enjoys
3 all of the Amendments to the Bill of Rights. Not everyone
4 does, apparently. It's everything that this country and all
5 Americans should stand against.

6 He didn't consult with an expert. Instead, he did
7 his own research. He cherry-picked, he twisted antiquated
8 court cases. All of them have all been overruled. They've
9 all been superseded. He did this to try to support his
10 position and to mislead the jury.

11 It's clear, from his testimony and statements at
12 trial, that he just didn't like paying taxes. He talked a lot
13 about the Grace Commission. He tried to tell the jury that
14 their tax money wasn't going to what they thought it would.
15 And they wouldn't be happy if they really knew what was really
16 going on behind the scenes.

17 But you know what he did enjoy? He enjoyed the
18 defense of a military, the peace of mind and the safety that
19 comes along with that. He enjoyed using his Social Security
20 Number to register for his profession and get paid for the
21 services. He enjoyed traveling the world on an American
22 passport, traveling on interstate highways, voting in
23 presidential elections.

24 And his dishonest actions and those belated attempts
25 to cover his tracks and try to explain what he was doing,

1 they're just really an affront to all of the hard-working
2 people who, even though they may disagree with paying taxes,
3 they are good citizens, they follow the laws. They fulfill
4 their obligations of citizenship. Essentially, in light of
5 the fact that he was making a good income, it is offensive to
6 the people who are working hard and paying into the system.

7 Unfortunately, maybe he finds it to be a sad story,
8 but his actions do have consequences. He's shown no remorse,
9 no contrition, he's accepted no responsibility. He
10 continues -- and as recently as yesterday -- to file frivolous
11 motions with the Court.

12 So, the government asks that any sentence imposed
13 reflect just how serious his actions are, as well as serve as
14 a deterrent to others who would contemplate taking the same
15 action as the defendant. The government does believe that a
16 guideline sentence at the high end would serve the purposes of
17 3535(a) and the government also does ask the Court to impose
18 restitution to the IRS in the amount of \$190,547.50.

19 THE COURT: Well, I'm obviously very familiar with
20 this case. It's been going on for quite some time. There's a
21 lot of issues that have been raised prior to trial, during
22 trial and after trial.

23 And I have heard from Mr. Weber. I have heard from
24 the government. And now, I have heard Mr. Comerford. Even
25 though he's standby counsel, I still felt that it was

important for him to say anything he felt was appropriate.

Pursuant to the Sentencing Reform Act of 1984, it's the judgement of the Court that the defendant, Charles Weber, is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a period of 30 months on Counts 1 and Counts 2. The time will be served concurrently. Cost of incarceration fee is waived. Upon release, he shall be placed on supervised release for a period of one year on each count. And these are to run -- so, Counts 1 and Counts 2, and they will run concurrently.

After a period of incarceration, he shall report in person to the probation office in the district in which he is released within 72 hours. He shall comply with the standard conditions as adopted by the Court. He shall not commit another federal, state or local crime. He shall be prohibited from possessing a firearm or other dangerous device and shall not possess a controlled substance.

He shall cooperate in the collection of a DNA sample, as required by the Justice For All Act of 2004. Since the instant offense occurred after September 13th, 1994, however, and is not related to illegal substances and he has no history of substance abuse problems, the mandatory requirements for drug testing is waived.

He shall participate in a mental health treatment program, including mental health evaluation and any treatment

1 recommended. The probation officer will supervise the details
2 of any testing and treatment, including the selection and the
3 scheduling. If inpatient treatment is recommended, however,
4 it must be approved by the Court, unless the defendant
5 consents. The defendant is not to leave such treatment until
6 completion or is ordered by the Court. While in treatment or
7 taking any psychotropic medication, he shall abstain from the
8 use of alcohol, be required to contribute to the costs of
9 services rendered.

10 He shall submit to a search of his person, property,
11 vehicle, place of residence or any other property under his
12 control, based upon reasonable suspicion, and permit the
13 confiscation of any evidence or contraband discovered.

14 After considering the factors set forth in
15 18 U.S.C. 3583(d), 18 U.S.C. 3664(a) and (f)(2), it's ordered
16 that he make restitution to the Internal Revenue Service in
17 the amount of \$190,547.50. Interest on the restitution is
18 waived. While on supervised release, he shall make monthly
19 payments at the rate of 10 percent of his monthly gross
20 income.

21 As long as the defendant remains obligated to provide
22 restitution, if he receives resources from any source,
23 including inheritance, settlement, insurance, lawsuits or
24 other judgment during the period of incarceration or
25 supervision, he shall be required to apply the value of such

resources to any outstanding restitution.

He shall cooperate with the Internal Revenue Service as to payment of any taxes, interest and penalties owed. He shall provide the U.S. Probation Office with access to any requested personal and/or business financial information. The U.S. Probation Office is authorized to release financial information submitted by the defendant to the U.S. Attorney's Office for the use in the collection of any unpaid fines or restitution.

If restitution is owed, he shall notify the U.S. Probation Office of any assets received and shall not disburse his interests in assets, including but not limited to income tax refunds, inheritance, insurance, lawsuits, settlements or gambling winnings without the approval of the U.S. Probation Office.

He shall not incur any form of debt, including but not limited to the use of existing credit cards, new credit cards, lines of credit, mortgages or private loans without the approval of the U.S. Probation Office.

Under these circumstances, and looking at the defendant's financial situation, the Court finds he does not have the ability to pay a fine. However, I will order the mandatory special assessment of \$100 on each count, for a total of \$200, which is due immediately. Payment shall begin under the Bureau of Prisons Inmate Financial Responsibility

01:08PM 1 Program.

01:08PM 2 In determining the sentence, the Court has considered
01:08PM 3 the advisory range and points raised by the defendant and
01:08PM 4 Mr. Comerford as well as the government. In addition, I have
01:08PM 5 carefully considered the factors in 18 U.S.C. 3553(a) and
01:08PM 6 finds the sentence imposed is sufficient but not greater than
01:08PM 7 necessary to comply with the purpose of sentencing set forth
01:08PM 8 in 18 U.S.C. 3553(a). Although I'm not bound to, I have
01:08PM 9 imposed a sentence at the mid-range of the guideline range.

01:08PM 10 It's noted that in the calendar year 2006 and '07,
01:08PM 11 defendant was a citizen of the United States who lived in
01:08PM 12 Snyder, New York and worked at his own dental practice in
01:08PM 13 Williamsville, New York. He provided dental services to
01:08PM 14 patients and received payment for those services. The
01:08PM 15 payments were received by him in the form of cash, personal
01:09PM 16 check and payment from insurance companies. Payments received
01:09PM 17 by him were generally deposited into the business banking
01:09PM 18 account held in the name of Charles Weber, DDS at First
01:09PM 19 Niagara Bank, now KeyBank.

01:09PM 20 Despite these circumstances, defendant filed tax
01:09PM 21 returns for tax years 2006 and '07 on which he falsely stated
01:09PM 22 that he was a non-resident alien who had not been present in
01:09PM 23 the United States in either year and had not had any gross
01:09PM 24 receipts, sales or income from any business activity in the
01:09PM 25 year. These materially false statements were submitted to the

01:09PM 1 Internal Revenue Service in the form of 1040-NRs for 2006,
01:09PM 2 2007, both of which were filed by the defendant in April of
01:09PM 3 2009.

01:09PM 4 The form 1040-NR is entitled U.S. Non-Resident Alien
01:10PM 5 Income Tax Return. It is intended to be used when the filer
01:10PM 6 is an non-resident alien who derived gross income and income
01:10PM 7 from the business located in the United States. The Court
01:10PM 8 finds the defendant knew that the approximate tax return for
01:10PM 9 him, as a U.S. citizen, was the form 1040 and the operation of
01:10PM 10 a dental practice resulted in gross receipts, sales and income
01:10PM 11 which were required to be included on such tax returns
01:10PM 12 accompanying Schedule C.

01:10PM 13 Indeed, defendant previously filed regular
01:10PM 14 Form 1040s, which were acknowledged that you were a U.S.
01:10PM 15 citizen, that you resided in the United States, that you had
01:10PM 16 gross receipts from a dental practice which was operated in
01:10PM 17 the United States, and that such gross receipts were required
01:10PM 18 to be included in the Schedule C for purposes of determining
01:10PM 19 the defendant's tax liability.

01:10PM 20 In April of 2007, when the tax returns were reviewed,
01:10PM 21 you requested an extension of time to file. Along with the
01:11PM 22 request, you sent an IRS check for \$15,000, representing what
01:11PM 23 you believed was the estimated tax payment due and owing for
01:11PM 24 the IRS for 2006.

01:11PM 25 When you ultimately filed the 2006 return in 2009,

1 the form 1040-NR you signed, under penalties of perjury,
2 falsely stated that you had, in fact, had no gross receipts,
3 sales or income from any dental practice and therefore you
4 were entitled to a refund of \$15,000 that you had paid in
5 estimated taxes. The 2007 form 1040-NR filed by the defendant
6 similarly stated that you had no gross receipts, sales or
7 income from the dental practice in 2007. Both returns were
8 sign by the defendant under penalties of perjury.

9 Now, I know the defendant has tried to argue that you
10 were and are not a U.S. citizen and that you're only a
11 citizen -- you are a state citizen by virtue of your lineage
12 and your conduct. You claim that you were not residing in the
13 United States because New York State is not part of the
14 United States and misinterpreted several court cases and laws.

15 As a result of your conduct, the loss resulting from
16 this conduct, including relevant conduct for the tax years
17 2006 through 2016 is a tax loss of \$190,547.50.

18 The Court has imposed a sentence at the middle of the
19 guideline advisory range for imprisonment. As indicated by
20 the government, our system of taxation depends on the
21 voluntary compliance. And the sentence the Court has imposed,
22 I believe, is necessary to provide general deterrence to
23 others to do not do what has been done here.

24 I imposed a term of supervised release consistent
25 with the guidelines. As I said, I'm not imposing a fine. I

01:13PM 1 don't believe he has the ability to pay a fine.

01:13PM 2 Now, you have a right to appeal the verdict of the
01:13PM 3 jury after the jury trial. You have a right to appeal the
01:13PM 4 sentence that the Court imposed, if you feel the Court has not
01:13PM 5 imposed a fair and just sentence consistent with the law.
01:13PM 6 Mr. Comerford, would you assist him in filing that Notice of
01:13PM 7 Appeal?

01:13PM 8 And the government, as far as a voluntary surrender,
01:13PM 9 I assume you have no problem for a voluntary surrender?

01:13PM 10 MS. LAMARQUE: Your Honor, the government is actually
01:13PM 11 moving for remand under 18 U.S.C. 3143(b). The defendant has
01:13PM 12 not shown that his appeal would raise a substantial question
01:13PM 13 of law or facts likely to result in a reversal.

01:13PM 14 THE COURT: Well, he's been compliant with all of the
01:13PM 15 court orders. He's been here every time he's been requested
01:13PM 16 to be here. He's been very compliant with all the
01:14PM 17 requirements of his bail and I feel that a voluntary surrender
01:14PM 18 is appropriate in this case. You will file the Notice of
01:14PM 19 Appeal?

01:14PM 20 MR. COMERFORD: We will file the Notice of Appeal,
01:14PM 21 Judge. And could the Court also recommend a facility as close
01:14PM 22 to Buffalo as possible?

01:14PM 23 THE COURT: Yes. I will make that recommendation.
01:14PM 24 Anything further?

01:14PM 25 MS. LAMARQUE: Nothing. Thank you.

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MR. WEBER: Thank you, Judge.

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THE COURT: Court will be in recess.

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THE CLERK: All rise.

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(Proceedings ended at 1:14 p.m.)

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I certify that the foregoing is a
correct transcription of the proceedings
recorded by me in this matter.

s/ Megan E. Pelka, RPR

Court Reporter,